

DENNIS W. BELNAP

IBLA 88-58

Decided December 28, 1989

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application C 46196.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Applications: Filing--Regulations: Interpretation

A regulation should be sufficiently clear that there is no reasonable basis for an oil and gas lease applicant's noncompliance with the regulation before it is interpreted to deprive an applicant of a preference right to a lease. Where neither the relevant regulations nor the Federal Register notice interpreting the regulations requires that an individual applicant who names a partnership as another party in interest include a list of the partners in the partnership with the application, a decision rejecting the application on that basis will be reversed.

APPEARANCES: Laura Lindley, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Dennis W. Belnap appeals from the September 25, 1987, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his simultaneous noncompetitive oil and gas lease application, C 46196. ^{1/}

^{1/} Pursuant to the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (FOOGLRA), § 5102, P.L. 100-203, 101 Stat. 1330-256 (to be codified at 30 U.S.C. § 226(b)(1)), the law was amended to require that a parcel be offered for competitive leasing prior to consideration of any noncompetitive lease offer. Accordingly, the simultaneous noncompetitive oil and gas leasing regulations have been removed from the current Code of Federal Regulations and reference to those regulations reflects the codification in the 1987 edition. Sec. 5106(a) of FOOGLRA expressly excepted pending noncompetitive oil and gas lease applications which are to be processed under the law in effect prior to amendment. 101 Stat. at 1330-259.

The application was selected with first priority for parcel CO-319 in the August 1987 simultaneous oil and gas lease drawing. BLM rejected the application because appellant disclosed a partnership as another party in interest but failed to list the names of the partners on the application or attach a separate list of the individual partners. BLM rested its decision on 43 CFR 3112.2-3 (1987), which requires the inclusion of the names of other parties who hold an interest in the lease; on 43 CFR 3102.5, which authorizes the demand for submission of the names of the partners in a partnership; and on a rule-related notice, published at 43 FR 37656 (Aug. 19, 1983), which requires the disclosure of such names at the time the application is filed where the applicant is a partnership.

Part B of appellant's simultaneous oil and gas lease application form (Form 3112-6a (April 1984)) listed appellant as the applicant. In the space provided on the form for "FULL NAME OF OTHER PARTIES IN INTEREST (IF APPLICABLE)," appellant listed Dominion Energy Partners, Ltd. The instructions for Part B of the application form state that "[f]ilings by associations, including partnerships, must be accompanied by a complete list of individuals who are members thereof."

Appellant argues that neither the applicable regulations nor the rule-related notice requires that a complete list of partners in a partnership named as another party in interest, as opposed to a partnership applicant, be included with the application. Appellant contends that the plain language of the notice and the instructions on the lease application form refer to applicants which are partnerships. The application at issue here was filed by an individual, not a partnership. 2/ Appellant asserts that, because the regulations, rule-related notice, and application instructions do not clearly require a list of partners in this circumstance, he should not be denied his preference right to a lease.

Appellant also states that there has been no violation of the prohibition against multiple filings delineated at 43 CFR 3112.5-1 (1987). He notes that none of the partners in Dominion Energy Partners, Ltd., filed an application for parcel CO-319, and supports this statement by attaching a list of the partners as well as a list of the 25 applicants for the parcel. Additionally, appellant states that if BLM had needed additional information about the partnership, it could have requested that information pursuant to 43 CFR 3102.5 (1987). In short, appellant contends that because neither the regulations, notice, nor instructions clearly requires that a list of partners in a partnership named as another party in interest accompany the application, and because there has been no violation of the prohibition against multiple filings, BLM's rejection of his application should be reversed.

2/ Appellant states that he is not a partner in Dominion Energy Partners, Ltd., but rather a consultant hired to develop prospects and acquire leases exclusively for the benefit of the partnership.

The regulation at 43 CFR 3112.2-3 (1987) ^{3/} provides in pertinent part:

Compliance with Subpart 3102 of this title is required. The applicant shall set forth on the lease application, or on a separate accompanying sheet, the names of all other parties who hold an interest (as defined in § 3000.0-5(k) of this title) in the application, or the lease, if issued.

"Party in interest," in turn, is defined as "a party who is or will be vested with any legal or equitable rights under the lease." 43 CFR 3000.0-5(k) (1987).

The regulation at 43 CFR 3102.5 (1987) provides in part: "Anyone seeking to acquire, or anyone holding, a Federal oil and gas lease or interest therein, shall upon demand submit additional information to show compliance with the regulations of this group and the Act." Relying on this regulation, BLM issued the August 19, 1983, rule-related notice which states:

After August 22, 1983, applications for simultaneously offered parcels received from associations, including partnerships, must be accompanied by a complete list of individuals who are members thereof. This requirement is authorized under 43 CFR 3102.5. By this notice, the Bureau of Land Management formally interprets and exercises its right of demand for this information at the time application is made. Failure by associations or partnerships to comply with this requirement shall result * * * in unacceptability or rejection of the application.

48 FR 37656 (Aug. 19, 1983). BLM indicated that the purpose of requiring this information is "to preserve the integrity of the simultaneous oil and gas leasing program by ensuring against multiple filings on a single parcel as prohibited by amended § 3112.5-1." *Id.*

[1] Notwithstanding the absence of a requirement in the relevant regulation itself to submit the names of the partners at the time an application is filed by a partnership applicant, the Board has upheld the application of the rule-related notice to affirm rejection of applications filed by partnerships where the names of the partners have not been disclosed on the application or an attachment thereto. TXP Operating Co., 99 IBLA 355

^{3/} The regulations governing onshore oil and gas leasing were extensively amended to comply with the provisions of the FOOGLRA. In accordance with section 5102(a) of that Act, which amended 30 U.S.C. § 226, the regulations governing noncompetitive over-the-counter lease offers and simultaneous filings, formerly found at 43 CFR Subparts 3111 and 3112, were removed in their entirety. 53 FR 22814, 22843 (June 17, 1988). The regulations cited in this decision are those in effect during the relevant time period.

(1987) 4/; The Turner Association, 85 IBLA 374 (1985), aff'd The Turner Association v. Hodel, CV 85-196-BLG-JFB (D. Mont. Sept. 23, 1986). Application of the 1983 Federal Register notice has been upheld pursuant to the authority of BLM under the regulation at 43 CFR 3102.5 (1987) to require additional evidence of the applicant's qualifications. TXP Operating Co., supra; The Turner Association, supra. The rule-related notice was upheld by the Board as an interpretive rule of procedure not requiring the exercise of the formal rulemaking process under the Administrative Procedure Act, 5 U.S.C. § 553 (1982), over vigorous dissent. Venlease I, 99 IBLA 387 (1987); accord, Santa Fe Energy Operating Partners, L.P., 101 IBLA 256 (1988) (en banc). In upholding this notice we have noted the existence of a dichotomy between the term other parties in interest and the members of an association which is itself the applicant: partners in a partnership applicant are not technically "other parties in interest" whose disclosure is mandated by the regulation at 43 CFR 3112.2-3 (1987). See TXP Operating Co., supra at 357; The Turner Association, supra at 376 and n.4.

BLM's Notice mandates that "applications for simultaneously offered parcels received from associations, including partnerships, must be accompanied by a complete list of individuals who are members thereof." 48 FR 37656 (emphasis added). The underscored language indicates that the notice only requires that a partnership applicant must submit the list of its partners. The notice itself, by its own terms, is not applicable except where the applicant is a partnership. That is not the situation in the present case where the applicant is an individual who has disclosed, in compliance with the requirements of the regulation, the name of another interested party. The Department has held on many occasions that a regulation should be sufficiently clear that there is no basis for an oil and gas applicant's noncompliance with the regulation before that regulation is interpreted to deprive an applicant of a preference right to a lease. See, e.g., Beard Oil Co., 97 IBLA 66 (1987); James M. Chudnow, 82 IBLA 262 (1984); Charles J. Rydzewski, 55 IBLA 373, 88 I.D. 627 (1981); Wallace S. Bingham, 21 IBLA 266, 82 I.D. 337 (1975); Mary I. Arata, 4 IBLA 201, 78 I.D. 397 (1971); A. M. Shaffer, 73 I.D. 293 (1966). If a regulation is ambiguous, any doubt as to its meaning should be resolved favorably to the applicant. Wallace S. Bingham, supra; Mary I. Arata, supra; A.M. Shaffer, supra. We agree with appellant that neither the regulations, the rule-related notice, nor the instructions on the lease application form clearly requires that a list of partners in a partnership named as another party in interest to a simultaneous oil and gas lease application accompany the application. Accordingly, we reverse BLM's rejection of appellant's application for failure to include a list of the partners in the partnership named as another party in interest with appellant's application.

Our holding does not limit BLM's ability to monitor compliance with 43 CFR 3112.5-1(b)'s prohibition against multiple filings. Pursuant to

4/ In TXP Operating Co., supra, the disclosure requirement was found to apply to general partners and all other partners holding or controlling more than 10 percent of the partnership.

43 CFR 3102.5, BLM has the authority to demand additional information from "[a]nyone seeking to acquire, or anyone holding, a Federal oil and gas lease or interest therein." Therefore, BLM is free to request additional information in situations like this one, including demanding a list of the partners in the partnership named as another party in interest. This authority to demand additional information on a case-by-case basis is distinct from the arbitrary rejection per se of all applications submitted without including such information. In the present case, appellant has furnished a list of all the partners in Dominion Energy Partners, Ltd., with his statement of reasons. A comparison of that list with the list of applicants for parcel CO-319 reveals no violation of the prohibition against multiple filings.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed is reversed, and the case is remanded to BLM for further action consistent with this decision.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge